INTERAGENCY AGREEMENT

BETWEEN THE

FEDERAL HIGHWAY ADMINISTRATION

AND THE

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGARDING

REIMBURSEMENT FOR EXPEDITED ENVIRONMENTAL REVIEW

FOR

INTERSTATE HIGHWAY 69

OCTOBER 29, 2003
WHEREAS, this Agreement is entered into under the authority of Section 1309 of the Transportation Equity Act for the 21st Century (TEA-21); and

WHEREAS, Section 1309 of TEA-21 directs the U.S. Department of Transportation to develop a coordinated environmental review process to streamline and expedite environmental review for highway construction projects; and

WHEREAS, the Parties have determined that it would be mutually beneficial to supplement the U.S. Environmental Protection Agency staffing above current levels; and

WHEREAS, the Parties have determined that any supplemental staffing above current levels would provide expedited review by the U.S. Environmental Protection Agency for the federal-aid I-69 highway project contemplated or under design by TxDOT; and

WHEREAS, this expedited review would enable the I-69 projects within Texas to proceed with additional and earlier coordination of project review, analysis and consultation by the Environmental Protection Agency; and

WHEREAS, this agreement will allow for full participation by U.S. EPA in activities and decisions related to the I-69 Process Manual and related Technical Advisory and Steering Committees; and

WHEREAS, the I-69 review process will enable all parties to evaluate the transportation project development process including related resource agency actions with the goal of developing new tools and approaches to achieve our respective missions in a more efficient, effective, and timely manner; and

WHEREAS, a product of the effort outlined in the I 69 process manual will be a streamlining report which will be jointly developed by the I 69 process partners; and

WHEREAS, the Federal Highway Administration is willing to reimburse the U.S. Environmental Protection Agency for supplemental staffing to provide these functions; and

WHEREAS, Section 1309(e) of TEA-21 allows for a State to request to use funds made available under Chapter 1 of Title 23, United States Code, to provide resources to affected Federal agencies necessary to conduct such activities; and

WHEREAS, the Federal Highway Administration has indicated and agrees that TxDOT’s allocated discretionary Federal-aid highway funds are eligible to support this agreement; and

WHEREAS, Texas State law restricts TxDOT from funding Federal agencies directly; and

WHEREAS, the FHWA, at the request of TxDOT, has agreed to withhold funds from TxDOT’s allocated discretionary funds to fund the U.S. EPA; and
WHEREAS, direction provided by the U.S. Environmental Protection Agency indicates such agreements and funding transfers must be able to demonstrate an improvement in performance.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the signatory parties to this Agreement concur with the following responsibilities and terms.
SCOPE OF WORK

1. Background

The construction of I-69 in Texas will cover a one thousand mile transportation corridor to improve international and interstate movement of people and freight. It is part of the 1600 mile I-69 NAFTA High Priority Corridor, which runs from the U.S.-Canada border to the U.S.-Mexico border. Its development was originally supported by ISTEA in 1991 and more recently by TEA-21 in 1998. With a relatively short timeline (Tier 1 ROD January 2006, Tier 2 ROD January 2008), I-69 is being developed as an environmental streamlining “pilot” per TEA-21, Section 1309 and was selected as a priority project by Executive Order 13274. In 2003 the Texas Legislature authorized TxDOT to develop the Trans Texas Corridor Plan, which incorporates I-69 as a potential component of that intermodal plan.

The Texas Division of the Federal Highway Administration (FHWA) serves as the lead Federal agency for the project. FHWA provides support and oversight to the Texas Department of Transportation (TxDOT), the State lead. In this capacity, FHWA is establishing environmental streamlining partnerships with the Environmental Protection Agency (EPA) and other federal environmental resource agencies. The goal of these partnerships is the delivery of I-69 in a manner that is safe, timely, cost-effective, and environmentally sound.

The relatively short timeline for development of the Texas portion of I-69 increases the need for expedited review of environmental documents, resulting from the streamlined project planning and development process developed through the I-69 interagency partnerships. This interagency agreement sets forth the responsibilities of the parties relative to the provision of additional resources for expedited environmental reviews of I-69 projects and participation in the joint study and reporting of suggestions for improving and streamlining the environmental process within and between the EPA, FHWA and TxDOT. The goal is to achieve timely design and implementation of adequate, safe and economical highway improvements while also assuring such design and implementation is sensitive to the protection of the environment.

2. FHWA responsibilities. FHWA will:

   A. Provide a maximum amount of $320,000 over the two-year term of this agreement for the costs contemplated by this agreement, including staff support, travel and per-diem at federal government rates.

   B. Review EPA requests for reimbursement for expenditures for salaries, benefits, travel and indirect costs in support of work under this agreement.

   C. Approve or dispute EPA reimbursement requests and negotiate with EPA in good faith toward reconciliation of any disputed amount.

3. EPA responsibilities. EPA will:
A. Assign qualified and experienced staff to participate in the I-69 NEPA integrated review and concurrence process.

B. Submit requests for reimbursement with expenditure reports to FHWA. Use the funds provided under this agreement to defray the costs of the salaries and reasonable travel expenses in accordance with the Federal Travel Regulations, 41 C.F.R. Chapter 301, which is incorporated into this agreement by reference. EPA will only submit expenditures for EPA staff time spent on work performed under this agreement.

C. Ensure that the staff shall keep time records identifying the hours spent on each specific task relative to this agreement. These records shall be available to FHWA for at least four (4) years after the final billing is submitted.

D. Fully participate in activities and decisions related to the I-69 Process Manual and related Technical and Steering Committee activities.

E. Participate with FHWA, TxDOT, and other resource agencies in the development of a joint streamlining report on suggestions and ideas for improving the logistics and communication within and between EPA, FHWA and TxDOT that occurs during the NEPA, consultation and permitting processes.

F. Meet the performance objectives in the attached Agency Performance Objectives.

4. General Terms

A. Parties to this Agreement may meet quarterly, as needed, to establish a priority list of project activities, which will guide the EPA in completion of the objectives of this Agreement.

B. Any amendment to this scope of work or its attachments shall become effective only when made in writing and signed by both parties.

C. Reimbursement Payments must be sent to EPA:

   U.S. Environmental Protection Agency
   Compliance Assurance and Enforcement Division (EPA)
   1445 Ross Avenue
   Dallas, TX 75202-2733

Expenditure Reports must be sent to FHWA:

   Ms. Sandra E. Allen
   I 69 Environmental Manager
   Federal Highway Administration
   Federal Office Building, Room 826
   300 East 8th Street
   Austin, TX 78701
D. This contract becomes effective when executed by all parties hereto and it shall terminate at the close of business on the date that is two calendar years after the its effective date, unless: (1) the contract period is modified by written amendment prior to the date of termination; or (2) the contract is otherwise terminated by either agency upon advance written notice.

E. This agreement may be terminated by either the FHWA or the EPA upon (60) sixty days written notice if the party requesting termination has demonstrated that the other party has not substantially fulfilled the responsibilities and terms of the Agreement after being provided with (60) sixty-day written notice to remedy the situation, unless the parties agree in writing to an alternate date. If the agreement is terminated prior to completion, EPA will reimburse FHWA the balance of funds advanced. Balance is to be determined by a monthly calculation and reimbursed to the nearest whole month.

F. The point of contact/project manager in each signatory agency is as listed below unless such responsibilities are delegated by this individual.

EPA:

Mr. Eli Martinez
Project Officer
Environmental Protection Agency
1445 Ross Avenue
Dallas, TX  75202-2733
Telephone No: (214) 665-5941
Fax No.: (214) 665-
E-Mail: Martinez.Eli@epamail.gov

FHWA:

Ms. Sandra E. Allen
I 69 Environmental Manager
Federal Highway Administration
Federal Office Building, Suite 826
300 East 8th Street
Austin, TX  78701
Telephone No.: (512) 536-5944
Fax No.: (512) 536-5990
E-Mail Address: Sandra.Allen@fhwa.dot.gov

G. During the performance of this agreement, the parties agree to abide by the terms of Executive Order 11246 on non-discrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will
take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex or national origin.

H. The parties to this agreement are acting in an independent capacity in the performance of their respective functions under this agreement. Regardless of the funding source for any staff employed by EPA, such staff shall not be construed as an officer, agency or employee of the FHWA. In the event of a liability claim, each party shall defend their own interests. Neither party shall be required to provide indemnification of the other party. In no way do the EPA or FHWA intend to abrogate through this agreement any obligations or duties assigned by law to their agencies.

I. In no way do the EPA or FHWA intend to abrogate through this agreement any obligations or duties assigned by law to their agencies.

J. This agreement does not preclude the signatory agencies from entering into other interagency agreements relative to their respective roles and responsibilities; however, any other agreements should be consistent with this agreement.
SIGNATURES OF THE PARTIES TO THE AGREEMENT

FOR THE US ENVIRONMENTAL PROTECTION AGENCY

________________________________________________________________________________________________________

Samuel Coleman, P.E.  DATE
Division Director, Compliance Assurance and Enforcement Division

FOR THE US FEDERAL HIGHWAY ADMINISTRATION

________________________________________________________________________________________________________

C. D. Reagan, Division Administrator  DATE
Federal Highway Administration, Austin, TX
Attachment

Agency Performance Objectives

1. The EPA shall review and respond to Texas I-69 project submissions according to timelines established in the I 69 Process Manual. NEPA documents, such as Draft Environmental Impact Statements, will be reviewed within a maximum review period of thirty (30) working days. Other project related documents would be acted upon within twenty (20) working days upon receipt of complete project documentation.

2. The review period commences when the EPA receives the documents from FHWA or TxDOT or other entities. Verbal concurrence between the TxDOT, FHWA and/or EPA staff of the need for additional information shall “stop the clock” on the running of the review period. Once the additional information has been submitted, FHWA/TxDOT and EPA shall mutually agree upon the date when the clock begins to run again. This verbal concurrence shall be confirmed by written documentation within five (5) working days.

3. The EPA staff shall accomplish the following tasks for FHWA/TxDOT I-69 projects, as appropriate; in order to expedite, implement and coordinate the transportation project development process and meet needs for compliance with applicable environmental statutes.

   a. Represent EPA by attending and fully participating in all appropriate meetings and activities of the I-69 NEPA and Project Development Process Steering Committee and Technical Advisory Committee, (as per EPA’s areas of focus and responsibility outlined within the Process Manual) and coordinated by FHWA and TxDOT;

   b. Participate in the joint development of a streamlining report evaluating the transportation project development process including related resource agency actions with the goal of developing new tools and approaches to achieve our respective missions in a more efficient, effective, and timely manner. The review, formulation of recommendations, and submission of the report shall be completed after the I-69 Tier 1 Record of Decision has been issued.

   c. Participate in activities associated with the development of mitigation options for the impacts associated with the Trans Texas/I-69 project, including advance mitigation opportunities.

   d. Participate in the development/implementation of written FHWA/TxDOT and EPA approaches and best management practices for improvements to NEPA processing and environmental protection and stewardship;

   e. Share in the responsibilities with FHWA and TxDOT in facilitating meetings or conference calls to clarify problems encountered during the project development process.

   f. Participate on task forces and field trips with authority or support to enable quick decisions.